

Conversations with Mr R. W. M. Dias (Emeritus Fellow of Magdalene College)

by
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Third Interview: Scholarly Work

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Between January and March 2007 Mr Dias was interviewed three times at his home in Babraham Road to record his reminiscences of nearly seventy years of his association with the Faculty of Law at the University of Cambridge. He is one of the very few remaining scholars whose experiences extend to pre-Second World War times, and at the time of writing, he is the oldest living ex-member of the Faculty.

The interviews were recorded, and the audio version is given on a parallel page of this website. Here we present a transcript of those recordings. Visitors will find that the two do not appear to match because we have taken the liberty of cutting and pasting portions of the transcript to produce a more coherent narrative of Mr Dias' career. In particular, portions of the third interview, where we "tidied up" some loose ends relating to his childhood have been combined into the first interview.

245. Mr Dias, in the first two interviews we spoke about your early life in Ceylon, your student days at Cambridge from 1939 to 42, your service as a rear gunner in the costal command during World War 2 and, finally, your time as a lecturer at Cambridge from 1951 to 1981. Today we're going to talk about your scholarly work and we'll start off with your book on Jurisprudence. The first edition was published in 1957 by Dias and Hughes and, according to the foreword, the book was written under rather strange circumstances. Yes, they were very peculiar.

246. Can you explain the circumstances and how this affected your input? The book was based on notes taken during your own lecture course at Aberystwyth, but written up by someone else, Mr Hughes in 1955.

That's right, yes.

247. How did Hamson, Jennings and Radzinowicz become involved?

Well, the point was that when Hughes' own book was published, it was Kurt Lipstein, you know, who had copies of my own book and he came to me and said, "What's all this, there's a remarkable resemblance" and I told Kurt Lipstein the circumstances. At that time Mr Hughes had applied for a post in the Department of Criminology here and Kurt said it was very necessary for the Appointments Committee to get to know about this and so he informed them and of course they dropped Mr Hughes like a hot potato.

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248. **Yes.**

That's how that came about. Well now Jack Hamson came in to it because he at that time was Chairman of the Faculty of Law. Robbie Jennings had been Hughes' tutor, when he was an undergraduate at Jesus. And Radzinowicz of course he was... he led the Department of Criminology, to which he was then applying for a post. That's how they got involved.

249. **This was very early in your career. What caused you to form your opinion so clearly at this young age?**

Well, the point was I had no clear opinions about things generally. There were one or two matters which I had thought of writing articles on, but I was forced into this, because of the scandal which erupted over the Hughes business.

250. **The first edition received some criticism...**

Oh certainly.

251. **...from Goodhart and Hart...which necessitated much re-writing for the second edition. Was this in any way related to the manner in which the first edition had been assembled?**

Now, that's a very difficult question to answer. I don't know about the manner. Let me say first of all that I had no intention of writing a text book on Jurisprudence. The most I had ever hoped to do was to write a few articles on this and that, but when this business came about, peace moves of a sort were initiated between Hughes and myself, and it was agreed by the powers that be, Jack Hamson, who was the Chairman of the Faculty and Robbie Jennings and Radzinowicz of the Department of Criminology, they thought that the best thing would be for his book to be withdrawn from publication, and that he and I would collaborate in producing a joint book. That's how it came about.

252. **The second edition in 1964 was done without Mr Hughes.**

That's right.

253. **Did this allow you more freedom to express yourself?**

Most certainly it did, yes.

254. **And it received very good reviews?**

Well, yes. Of a sort.

255. **So the re-writing had been a great success. Had you re-thought your ideas, Mr Dias, or was it merely the extra freedom that you now had?**

Well, in a sense one is always re-thinking one's ideas, so they develop, yes. And I suppose I have developed new ideas, myself. Yes.

256. **Hart had apparently complained that the First Edition was too broadly ranging, but in the second edition you stuck to your guns and Durham's review praised your approach,**



saying that students need a broad introduction before they can follow the specific paths advocated by Hart. In retrospect do you believe that you were justified?

I don't know that I can possibly make a comment on that. As I said, I had no intention of writing a text book on Jurisprudence and when I had to do it I just sort of stuck some ideas together and made a book out of it.

257. The idea of a separate book, *The Bibliography of Jurisprudence*, was written to explain the context and the meaning of various terms. Where did you get this idea from, Mr Dias?

I didn't get it from anywhere. Just an idea that occurred to me that I thought the thing to do is to encourage people to read these articles and books and things themselves and in order to help them I thought it would be a good idea to have a little bibliography giving a brief synopsis of what these books are about so they will know what they involve and whether it's the sort of thing they want to start reading.

258. Was it perhaps necessary because, as you were at great pains to point out, semantics are everything in law, so that all possible definitions of words and concepts have to be presented to the readers.

Yes.

259. Which edition of *Jurisprudence* did this accompany, can you remember?

This is the third edition.

260. Your wife and daughter are thanked for their help in compiling it, which you imply was a tedious job. You also imply it was their fortitude that kept you going. Did you wife have any interest in the law?

Well, not before she met me and I suppose naturally she took an interest in it simply because we got married.

261. I know your daughter, Julia, is a barrister.

That's right.

262. In the fifth edition you admit in the Preface that the book was, to quote, "born before it was conceived". What did you mean by this?

Well, the point is, it was born because of the Hughes affair and that First Edition was, as it were, brought in to existence. It was forced into existence because of the crisis. Before it was conceived because my ideas changed very radically and fundamentally over the period of time so in a sense the book was born because of the crisis. And the later editions were conceived later.

263. You made many major alterations over 30 years?

That's right.

264. Did your ideas evolve over this time so that you could eventually achieve your aim of trying to give your readers a new way of thinking about the law?

I hoped to do that. How far I succeeded, I don't know.



265. We come now to your next book which was the *English Law of Torts, A Comparative Introduction*. Co-authored with Markesinis in 1976.

Yes.

266. It introduces the common law of torts to European civil lawyers. It's mentioned that because the UK had joined what is now the EU in 1973, it was necessary to promote understanding of each other's systems. Do you think that this state of affairs had been achieved more than 30 years on? Not obviously only because of your book but...

I think so, yes. I think increasingly there's an inter-relationship, economic, cultural and all the rest of it, and it has been growing ever since.

267. With the bias on EU law that now is supreme in the UK, and the fact that the EU law is based on French law in the first instance, has not the necessity for foreigners to understand the common law perspective considerably diminished?

I don't know that I'm in a position to comment on that, how far it has diminished... I don't think it has diminished, it has remained common law, more accessible, and I think continental lawyers find it increasingly necessary to have an understanding of the Common Law, just as the common lawyers find it necessary to understand European systems. So...

268. Because of this state of affairs, can you detect ways in which the Common Law has evolved to accommodate Civil Law concepts and ways of approaching issues?

Not to any marked degree. Common Law has been very resilient over the centuries. Well, not so much resilient, as adaptable. I think it has adapted itself to an increasing liaison with continental systems.

269. Mr Dias, how did you become so familiar with the workings of the French and the German civil codes?

I don't know that I am either. *[Laughs]* No, I don't know that I'm very familiar with either of those systems.

270. Your father and your grandfather were Judges in Ceylon.

Yes.

271. So the law would have been deeply ingrained in your background.

Certainly.

272. What influence did the Common Law play in either the philosophy or workings of the Ceylon system?

The Ceylon system is Roman Dutch law so the Common Law really had very little influence, but because most of the Judges and lawyers had been English trained, naturally there was a great deal of infiltration of concepts and ways of thinking. And the whole legal system, particularly procedure in Courts and things like that, was very much based on the English system. So, naturally a great deal of borrowing from the Common Law.



273. Did the awareness of the problems such similarities or contrasts pose for non-UK lawyers move you to write the book *The English Law of Torts*?

I think that was the idea,. To have a very simplified introduction. Not primarily for the benefit of continental lawyers, but also, one hoped, for budding lawyers in England. To have a simple introduction to the concepts of the English law of Torts.

274. This brings us to your next book, or you call it a pamphlet, and this was published in 1988: *Lectures on the Common Law, the Concept of Law for a Caring Society*. It was part of a course given by the Institute of Anglo American Law in Leiden, which all came after the summer school for foreign lawyers organised by Professor Hamson.

That's right.

275. Did you go to Leiden with Mr Collier to give your paper? Can you remember what it was like, the circumstances? You had officially retired then, hadn't you?

Yes, yes. But this was chiefly on the initiative of Professor Hamson who was a comparative lawyer and he suggested to Collier and myself, that it would be a rather good idea if we could present as it were a conspectus of English law and English... A concept to the continental lawyers who would be very interested to hear him, and that's how that came about. Yes.

276. Just coming back briefly to your book on Jurisprudence, it seems you took a detached view on the issue of positivism versus naturalism. On page 39 of *Jurisprudence* you say, "Finally laws are designed to endure over long periods."

That's right, yes.

277. Also on page 49 you used the analogy of 3D objects and the fourth dimension of time to restate this premises. These statements declare you a naturalist.

Do they? Oh, alright. *[Laughter]*

278. Were you always that way inclined or is this something you came to?

Not always, no. I think that... yes, I can't pin point any particular period or event which triggered that idea but it sort of grew naturally.

279. Looking back, do you feel any sense of being prophetic in some of the topics that have required new law highlighting various problems that you foresaw?

Not really, no. I'm afraid I haven't really been conscious of any...

280. Not even, for example, how to deal with young tearaways in the whole "blame culture" in the context of the individual's obligations versus society's role?

Yes, well, I mean I've always had strong feelings about that, yes. But I don't think there was any particular event which sparked that off.



281. We come then to your book on Tort Law written with Markesinis?

Yes.

282. I have the Second Edition, 1989, which one reviewer from New Zealand called “a joy to read” and another said it was “elevated” out of the normal run of books - this was a review in the *Law Quarterly Review*. Overall, I sense that you were concerned with the mess that UK Tort law was in. Is that still the case?

Completely. Oh, very much so. But that’s the problem with the Law of Tort, it’s changing weekly and it’s never static. It’s in a state of flux all the time.

283. In the Introduction you contrast the fondness for litigation in the USA with the UK position, and say that we are 10 to 15 years behind their fashion. You also note the differences in awards in US and UK Courts. Have we, in the UK, now moved on in the 20 years since the book was published?

Yes, I think in a sense. Now and again, I see the pressure for heavier damages and that was a move perceptibly towards the position in the United States, and I think that’s deplorable.

284. Perhaps we’ve taken to the culture of large damages too greatly. You also pointed out that insurance has altered the balance in many areas of Tort. For instance we don’t pay the price for negligence - the insurance companies do, and this highlights the conflict of defining negligence and accident. All in all you seem not happy with the UK system of dealing with accidents which you define as what Tort mainly deals with.

Yes.

285. You were critical of the ‘76 Pearson Commission’s recommendations, which were not acted upon.

Yes.

286. You cited the examples of France, where accidents at work are not dealt with by Tort, and New Zealand, where the accident compensation scheme is enshrined in statute. That is why you said Tort law was at a crossroads.

Yes.

287. Has this situation improved in 20 years?

Not markedly in Tort, but given the fact that now litigation in Tort is conducted through the insurance companies... and they’ve got much larger financial resources behind them, and so they tend to litigate as far as possible.



288. On page 44 you were very critical of the very theoretical approach taken by academics to Tort issues. There's a lot of theory, but it is often not practical, or of use in the real world. Also in the UK in particular, academics did not like to criticise judges. Has this changed?

No, I don't think so. No. There is still a great deal of respect and deference paid... shown towards Judges. But I don't know that there has been any marked change in that respect.

289. Some of the reviewers found your comparison with US deviation from the Common Law on the question of defamation, very useful. In effect the Supreme Court felt that the Common Law, as applied by individual states, did not uphold the level of free speech that the US needed. Do you think we should be going along those lines?

Not really, no. I don't think we should, but I think the tendency is inevitable, though.

290. Do you differentiate between public and private figures, and perhaps whether the matter is public or private?

Yes, I think we do, yes.

291. From your other writings, for example your lectures on the Common Law, you seemed in favour of a Bill of Rights to deal with such matters. This would take us closer to the US legal position, if not necessarily the law itself. Is this still your view Mr Dias?

I think so, yes. Yes. Yes, because the haphazard way in which the Common Law has developed and is developing, I think is out of date now. Still haphazard and if we could only inject some kind of system, or plan for growth, I think it would be ideal. But I don't know how we could bring that about.

292. Thank you very much Mr Dias.

